

Limited Scope Representation in Nebraska

FAQ for Attorneys, Page 1 of 2

Frequently asked questions



What is Limited Scope Representation (LSR)? Limited scope representation refers to a situation in which a client and an attorney agree to limit the scope of the attorney's representation of the client in the particular legal action.

- ☐ LSR provides an opportunity for the legal profession to render legal services to persons who might otherwise decide to be pro se, or "DIY," do-it-yourself.
- ☐ LSR has the potential of increasing the attorney's client base.
- ☐ LSR is likely to reduce the attorney's accounts receivable in that most lawyers collect the full fee for LSR upfront as part of the fee agreement.

What is an example of LSR? One illustration would be a divorce action. If a divorce action includes 40 tasks, the client and the attorney may agree that the client will do 25 of the 40 tasks and the lawyer will be responsible for the other 15 tasks. The client's tasks might include filling out financial forms, tracking down documents, contacting possible witnesses, and negotiating with the other spouse. The attorney's tasks might include drafting briefs and filing legal documents, providing legal advice on pensions and retirement, and representing the client at the court hearing.

The engagement letter and fee arrangement between the attorney and client would explicitly articulate and itemize this division of labor, resulting in a lower fee to the client for reduced professional services rendered by the attorney.

Can LSR be used in any legal case? Not all cases lend themselves to dividing up the tasks and responsibilities. Rather, significant numbers of legal matters are better served if the lawyer represents the client throughout the entire process.

What criteria does an attorney use to determine whether LSR might be appropriate? The attorney should review the Nebraska Rules of Professional Conduct (2005) and specifically the 2008 amendments to §§ 3-501.2 and 3-504.2 adopted by the Nebraska Supreme Court. These include the following considerations:

- ☐ **Is it reasonable** for the client and attorney to divide up tasks in the legal matter? The lawyer needs to make a judgment as to whether LSR is reasonable under the circumstances.
- ☐ **Does the client give informed consent** to the attorney's limited representation? The Rules define informed consent under the terminology section as: "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

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What does the attorney file with the court after obtaining the client's written consent to begin the limited scope representation (LSR)?

- ☐ File a "Limited Appearance" document with the court, clearly defining the scope of limited representation.

What happens after the attorney completes his or her limited scope representation?

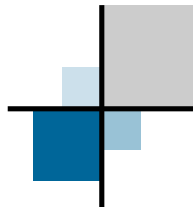
- ☐ The attorney must file a "Certificate of Completion of Limited Representation." This must be filed with the court within 10 days after completion, and copies must be provided to the client, opposing counsel, and opposing party if unrepresented.
- ☐ After the Certificate of Completion is filed, the attorney's obligation to continue to represent the client is terminated.
- ☐ The attorney does not need to file a Motion to Withdraw or obtain the court's permission to no longer participate in the proceeding.

What impact might filing a "Limited Appearance" have on opposing counsel's scope of communication with the LSR client and attorney?

- ☐ Opposing counsel may directly communicate with the opposing party on matters outside of the limited representation.
- ☐ The LSR attorney should discuss this possibility with the LSR client.

A related question, but outside the LSR practice, is "May an attorney who is not an attorney of record ethically prepare pleadings, briefs or other documents to be filed with the court without disclosing his or her participation?"

- ☐ According to Dennis Carlson, Nebraska's Counsel on Discipline, the August 27, 2008 amendment to Rule 3-501.2 (c) specifically prohibits this activity, known as "ghostwriting."*
- ☐ The lawyer who prepares the filings should indicate "Prepared By" and his or her name, business address, and bar number. This is not deemed an appearance by the lawyer.
- ☐ The actual filing prepared under this rule is to be signed by the litigant and designated "pro se."



References:

(1) Nebraska Rules of Professional Conduct (2005) as amended 2008. Neb. Ct. R. of Prof. Cond. §§ 3-501.0 to 3-508.5. www.supremecourt.ne.gov/rules

(2)* *Amendments to Rules Facilitate Unbundling of Legal Services*, by Dennis Carlson. **The Nebraska Lawyer**, November/December 2008, p. 35-36.